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EXAMINER

WASYLCHAK, STEVEN R

ART UNIT	PAPER NUMBER
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3624

DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/531,102

Applicant(s)

GIANNINI ET AL.

Examiner

Steven R. Wasylchak

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

### **Response to Remarks**

1. This office action is in response to applicants remarks dated April 7, 2004.

Claims 1-22 are pending.

2. Previously claims 1-3 and 7-11 were amended; claims 13-16 were added and claims 17-22 were subsequently added.

3. Examiner's prior rejections are maintained; new column, row citations were added.

4. Examiner responds to remarks:

page 2: MPEP 707.07(f) merely uses the word "should", not must. Examiner requests MPEP citation for "must" in this procedural matter.

Page 3: the second article is a skirt or blouse from the same site; a web-linking engine is a merely technical jargon for HTML software that has link instructions; Examiner has built his own website over 5 years ago using HTML with links and will issue an affidavit upon request. Likewise, the computer system is a CAD (col 1, L 47).

Examiner stands corrected on '769 and points out that this reference teaches two articles making up the day suite: the jacket and skirt in fig 3; the internet (abstract) and the inherent HTML engine websites are very common from Examiner's direct experience. Furthermore, the system is a CAD (col 1, L 47), which can be a LAN linked to the internet with its different site linkages via the HTML software engine.

'574 is a computer system ( col 1, L 27) and thus readily adaptable to software engines and the internet. This reference discloses a second article in col 2, L 36 where garment

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includes suite with jacket and skirt or jacket and pants and creating the garment (col 2, L 3). The first objective is selecting and describing colors (col 1, L 44) and selecting colors that match in a garment consisting of said suite's jacket and pants is desirable for actual making or manufacture (col 1, L 44); the dye aspect is secondary: a "further object" (col 1, L 50).

Both '574 and '769 share core common objectives: to make apparel, and hence available for purchase: '574 (col 1, L 420; '769 (abstract: method for electronic fashion shopping); and for selection, '574 (col 1, L 48: selecting); '769 (abstract: selecting fashions).

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 2, 5-9, 12-16 are rejected under 35 U.S.C. 103(a) as being anticipated by Kagami et al (US 5,974,400) and further in view of Graf et al (US 6,349,300).

As per claim 1,

(Amended) A system for on-line viewing of an article on another structure, comprising:

-on-line viewer site; / fig 2(203); abstract; col 2, L 12-20; ); **col 5, L 52-60**

col 11, L 7-10; e.g., colors: **fig 7(705), 8(705)**

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-and a computer-driven web-linking engine configured and arranged to create an item from image-data/ col 1, L 10-19; fig 5(501); fig 7; fig 8, col 3, L 17-18; col 3, L 56-66; col 8, L 35-40

-corresponding to a colored article selected by an on-line viewer from the on-line viewer site for display with an image of a colored structure selected by the on-line viewer,/ fig 7(701,702,705); fig 8(705,801,20131); **col 5, L 52-60**

-Kagami teaches the computer-driven web-linking engine and the colored article and the colored structure./ fig 8 (801: TRY ON RESULTS, which would include color combinations). However, Kagami does not explicitly teach comparison of color codes identifying respective colors. Graf et al teaches the comparison of color codes identifying respective colors. / abstract; fig 2 (34,48); fig 3; fig 5(30,54); col 3, L 39-57; col 4, L 59 to col 5, L 4. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to combine these limitations for the advantage of simultaneous multiple comparisons to save time and, In re Harza, 274 F.2d 669,124 USPQ 378 (CCPA 1960), the court held that plurality or parts or elements has no patentable significance unless a new and unexpected result is produced, of which Examiner sees no unexpected result (in response to Applicant's argument of "viewing the color of more than one item at a time on line").

-Kagami teaches a colored article and the colored structure/ fig 8 (801: TRY ON RESULTS, which would include color combinations). However, Kagami et al does not explicitly teach the colored article and the colored structure satisfying a color-matching

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scheme. Graf et al teaches the color matching scheme (abstract; fig 2,3,5); col 1, L 4-63; col 3, L 59 to col 4, L 34; col 5, L 5-31, L 65 to col 6, L 29). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to combine these limitations for the advantage of simultaneous multiple comparisons in the **same location** to **save time** by not flipping back and forth and, In re Harza, 274 F.2d 669,124 USPQ 378 (CCPA 1960), the court held that plurality or parts or elements has no patentable significance unless a new and unexpected result is produced, of which Examiner sees no unexpected result (in response to Applicant's argument of "viewing the color of more than one item at a time on line"). **Note:** Applicant's "**high secrecy**" (which is obviously not absolute secrecy) motivation argument (col 6, lines 42-44) pertains only to face and body shape, not to color attributes, which are clearly listed and visually seen in fig 7, 8 in (705) and (801). Also, by combining the two references any of the color combinations would ultimately be revealed on the model in fig 7, 8. The two references have many purposes, but as can be seen from their titles, color and garment selection are the primary purposes and obviously they can go hand in hand.

As per claim 2,

(Amended) The system of claim 1, wherein the computer-driven web-linking engine compares by using a data set that includes a frequency-based color identification code provided for the color of the article and a frequency-based color identification code provided for the color of the structure. / col 5, L 65 to col 6, L 52; **col 5, L 52-60; col 6,**

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**L 5-10; applicant's own admission in specification on page 5 (last para.) to page 8, L 9.**

As per claim 5,

The system of claim 1, further including a computer arrangement generating the image data corresponding to the colored article with the color identification code provided for the color of the article. / **fig 7,8; col 4, L 17-58; col 5, L 38-64; col 5, L 52-60**

As per claim 6,

A system for on -line viewing of an article on another structure, comprising:

-means for viewing images at a video display site; and

web-linking means for creating an item from image-data corresponding to a colored article selected by an on-line viewer from the on-line viewer site with an image of a colored structure selected by the on-line viewer, the computer-driven web-linking engine adapted to indicate whether the colored article and the colored structure satisfy a color-matching criterion. / refer to reasoning under claim 1

As per claim 7,

(Amended) A method for on-line viewing of an article on another structure, comprising: viewing images at a video display site; and creating an item from image-data corresponding to a colored article selected by an on-line viewer from the on-line viewer site for display with an image of a colored structure selected by the on-line viewer, comparing color codes identifying respective colors of the colored article and colored item, and in response, indicating whether the colored article and the colored structure satisfy a color-matching criterion. / refer to reasoning under claim 1

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As per claim 8,

(Amended) A method for on-line viewing of an article on an other structure, comprising: creating an item from image-data corresponding to a colored article selected by an on-line viewer from an on-line viewer site for display with an image of a colored structure selected by an on-line viewer, comparing color codes identifying respective colors of the colored article and colored item, and in response, indicating whether the colored article and the colored structure satisfy a color-matching criterion. / refer to reasoning under claim 1

As per claim 9,

(Amended) The method of claim 8, further including creating the item using a data set that includes a frequency-based color identification code provided for the color of the article and a frequency-based color identification code provided for the color of the structure. / col 5, L 65 to col 6, L 52; **col 5, L 52-60; col 6, L 5-10; applicant's own admission page 5 (last para.) to page 8, L 9**

As per claim 12,

The method of claim 8, further including generating the image-data corresponding to the colored article with the color identification code provided for the color of the article. / col 4, L 17-58; col 5, L 38-64; **col 5, L 52-60; col 6, L 5-10; applicant's own admission in specification on page 5 (last para.) to page 8, L 9; fig 7,8; col 4, L 17-58; col 5, L 38-64; col 5, L 52-60**



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As per claim 13,

(New) The system of claim 1, wherein the color-matching criterion includes a color reference coding chart. / abstract; fig 1-5; col 1, L 4-63; col 3, L 59 to col 4, L 34; col 5, L 5-31, L 65 to col 6, L 29; **fig 7(705), 8(705); applicant's own admission page 5 (last para.) to page 8, L 9.**

As per claim 14,

(New) The system of claim 14, wherein the color-reference coding chart is based on measured color frequencies. / col 5, L 65 to col 6, L 52 (spectrum as a range of frequencies and lambda wavelengths via conversion which are a property of all colors); **applicant's own admission page 5 (last para.) to page 8, L 9.**

As per claim 15,

(New) The system of claim 15, wherein respective colors of the colored article and the colored structure are represented by an electronic color tag that indicates a measurement of the respective colors using the color-reference chart. / col 5, L 65 to col 6, L 57 (try on goods identifier); **applicant's own admission page 5 (last para.) to page 8, L 9; fig 7 (705: list as chart); fig 8(705)**

As per claim 16,

(New) The system of claim 16, wherein the electronic tags are part of product codes that identify the respective article and structure. / col 5, L 65 to col 6, L 57 (try on goods identifier as code); **applicant's own admission page 5 (last para.) to page 8, L 9.**

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7. Claims 3, 4 and 10, 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graf et al (US 6,349,300) and in view of Kagami et al. (US 5,974,400).

As per claims 3 and 10,

The system of claim 2, wherein Graf teaches a data set (col 5, L 65 to col 6, L 52).

However, Graf does not teach an article size code. Kagami et al teaches an article size code ( col 70, L 41-50; fig 27(identifier as a code); fig 30). It would have been obvious to one of ordinary skill in the art to use this limitation for the advantage of offering more product information upon which a customer can make a more informed decision to purchase an article.

As per claim 4 and 11,

The system of claim 3, wherein Graf teaches a the data set (col 5, L 65 to col 6, L 52).

However, Graf does not teach an article style code. Kagami et al teaches an article style code (col 34, L 66 to col 35, L 17; col 50, L 53-62 (style is a preference); col 63, L 15-19; col 96, L 62-67); col 8, L 64-68(contour identifying a style); fig 3 (3006, 3009); fig 7 (702,703). It would have been obvious to one of ordinary skill in the art to use this limitation for the advantage of offering more product information upon which a customer can make a more informed decision to purchase an article.

8. Claims 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rose (US 5,930,769) and in view of Gerber (US 4,843,574).

17. (New) A system for comparison of multiple apparel articles, comprising:

an on-line viewer site; and/ Rose: abstract; fig 3, 4; col 1, L 51-64; fig 2 (14-26)

Rose discloses a computer-driven web-linking engine configured and arranged to display a first colored apparel article selected by an on-line viewer from the on-line viewer site for display. / abstract; fig 3, 4. Rose does not explicitly disclose a second colored apparel article selected by an on-line viewer from the on-line viewer site, the computer-driven web-linking engine adapted to use a color matching criterion to determine whether the first colored apparel article color matches the second colored apparel article color. However, Gerber discloses a second colored apparel article selected by an on-line viewer from the on-line viewer site, the computer-driven web-linking engine adapted to use a color matching criterion to determine whether the first colored apparel article color matches the second colored apparel article color. /fig 1 (A,B); col 2, L 55 to col. 3, L 24; col 4, L 54 to col 5, L 11; col 5, L 29-37.

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to use this limitation of a second colored apparel article selected by an on-line viewer from the on-line viewer site, the computer-driven web-linking engine adapted to use a color matching criterion to determine whether the first colored apparel article color matches the second colored apparel article color for the advantage of customizing by comparing styles with different color combinations.

18. (New) Rose discloses the computer-driven web-linking engine/ abstract; fig 3,4.

Rose does not explicitly disclose a engine configured and arranged to display an image corresponding to a structure dressed with the first colored apparel item and the second

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colored apparel item. However, Gerber discloses a engine configured and arranged to display an image corresponding to a structure dressed with the first colored apparel item and the second colored apparel item./ fig 1 (A,B); col 2, L 55 to col. 3, L 24; col 4, L 54 to col 5, L 11; col 5, L 29-37.

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to use this limitation of a engine configured and arranged to display an image corresponding to a structure dressed with the first colored apparel item and the second colored apparel item for the advantage of customizing by comparing styles with different color combinations.

19. (New) Rose discloses the computer-driven web-linking engine/abstract; fig 3, 4. Rose does not explicitly disclose an engine configured and arranged to retrieve the first colored apparel item from a first store and the second colored apparel item from a second store. However, Gerber discloses an engine configured and arranged to retrieve the first colored apparel item from a first store and the second colored apparel item from a second store.

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to use this limitation discloses an engine configured and arranged to retrieve the first colored apparel item from a first store and the second colored apparel item from a second store for the advantage of customizing by comparing styles with different color combinations from a variety of markets to increase sales.

20. (New) Rose discloses the computer-driven web-linking engine / abstract; fig 3,4. Rose does not explicitly disclose a engine configured and arranged to retrieve the first colored apparel item and the second colored apparel item from the same store. However, Gerber discloses a engine configured and arranged to retrieve the first colored apparel item and the second colored apparel item from the same store./ fig 1 (A,B); col 2, L 55 to col. 3, L 24; col 4, L 54 to col 5, L 11; col 5, L 29-37. It would have

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been obvious to one of ordinary skill in the art at the time of applicant's invention to use this limitation of a engine configured and arranged to retrieve the first colored apparel item and the second colored apparel item from the same store for the advantage of customizing by comparing styles with different color combinations from a variety of markets to increase sales.

21. (New) Rose discloses the computer-driven web-linking engine is configured and arranged to be operated independent from the retail store./abstract; col 1, L 29-35, 53-64, col. 2, L 3-9 (manual shopping). Rose dose not explicitly disclose at least one of the first colored apparel article and the second colored apparel article are provided by a retail store. However, Gerber discloses at least one of the first colored apparel article and the second colored apparel article are provided by a retail store./ fig 1 (A,B); col 2, L 55 to col. 3, L 24; col 4, L 54 to col 5, L 11; col 5, L 29-37. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to use this limitation of at least one of the first colored apparel article and the second colored apparel article are provided by a retail store for the advantage of customizing by comparing styles with different color combinations from a variety of markets to increase sales.

22. (New) Rose discloses the computer-driven web-linking engine / abstract. Rose does not explicitly disclose an engine configured and arranged to retrieve the first colored apparel item from a first store and the second colored apparel item from a second store and wherein the computer-driven web linking engine is configured and arranged to be operated independent from each of the stores. However, Gerber discloses an engine configured and arranged to retrieve the first colored apparel item from a first store and the second colored apparel item from a second store and wherein the computer-driven web linking engine is configured and arranged to be operated independent from each of the stores./ fig 1 (A,B); col 2, L 55 to col. 3, L 24; col 4, L 54 to col 5, L 11; col 5, L 29-37. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to use this limitation of an engine configured and arranged to retrieve the first colored apparel item from a first store and the second

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colored apparel item from a second store and wherein the computer-driven web linking engine is configured and arranged to be operated independent from each of the stores for the advantage of customizing by comparing styles with different color combinations from a variety of markets to increase sales.

This action is FINAL. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven R. Wasylchak whose telephone number is (703) 308-2848. The examiner can normally be reached on Monday-Thursday from 7:00 a.m. to 6:00 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin, can be reached at (703) 308-1065. The fax number for Art Unit 3624 is (703) 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Steven Wasylchak

10/26/04



Alawn Bobbe  
PRIMARY  
AV. 3624